

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

JAN 25 2021

CARMELITA REEDER SHIFF, CLERK
U.S. DIST. COURT, WESTERN DIST. OKLA.
BY mt DEPUTY

DARYL DEAN WHITEBIRD,

Plaintiff,

v.

SHERIFF TODD GIBSON, et al.,

Defendants.

Case No. CIV-19-184-SLP

Plaintiff's Motion To Strike Defendants

Motion For Summary of Judgment

Comes now, plaintiff Daryl Dean Whitebird, pro se and moves this court to strike defendants Motion for Summary of Judgment against plaintiff Daryl Dean Whitebird. In support thereof, plaintiff respectfully submits the court the following brief.

Statement of the Case

Plaintiff Whitebird brings this case against the defendants in their individual capacity under 42 U.S.C. § 1983 for a violation of his Constitutional Rights. (Doc. 1) Specifically plaintiff was retaliated against for filing grievances and was placed in a lockdown pod.

Argument and Authority

Federal rule of civil procedure 12 (f) governs Motion to Strike, that the rule allows a court to “Order stricken from any pleading, any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

- I. Defendants motion for Summary of Judgment is premature because Plaintiff has not yet had the opportunity to discover information essential to his opposition to Summary of judgement.

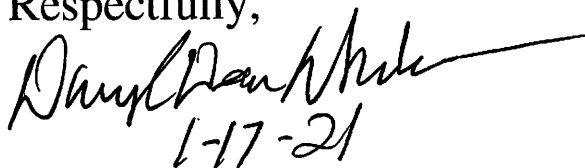
Both the Supreme Court and the Tenth Circuit have instructed that “Summary Judgement should not be granted where the non-moving party has not had the opportunity to Discovery information that is essential to his opposition”. See *Trans-W. Petrol., Inc. v. U.S. Gypsum Co.*, 830 F.3d 1171, 1175 (10th Cir. 2016)(quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,250 n.5 (1986)). Federal rules of Federal Procedure 56(d) provides the mechanism for dealing with” premature motions” for Summary judgment, “allow[ing] a summary judgment motion to be denied if the non-moving party has not had the opportunity to make full

discovery". Celotex Corp. V. Catrett, 477 U.S. 317, 326 (1986); see Fed. R. Civ. P. 56(d)(1).

Defendant did not follow the standard requirement in his Motion Summary judgment, and has therefore filed a deficient motion to which plaintiff is unable to respond appropriately.

Wherefore, plaintiff respectfully request the court strike plaintiff's motion for summary of judgment. If the court determines defendants motion stands, plaintiff request additional time to respond accordingly.

Respectfully,

A handwritten signature in black ink, appearing to read "Daryl Dean Whitebird", with a long horizontal flourish extending to the right.

1-17-21

Daryl Dean Whitebird

Certificate of Service

I hereby certify that on (date) 1-19-21, I filed the attached document with
the Clerk of Court and served the attached document by (service method)

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